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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996	)	
	)	
Telecommunications Carriers' Use	)	
Of Customer Proprietary Network	)	
Information and Other Customer Information	)	
	)	
Implementation of the Non-Accounting	)	CC Docket No. 96-149
Safeguards of Sections 271 and 272	)	
Of the Communications Act of 1934,	)	
As Amended	)	

OPPOSITION AND COMMENTS OF GTE

GTE Service Corporation and its affiliated domestic communications companies (collectively "GTE")[1] respectfully submit their opposition and comments in response to the *Petition for Further Reconsideration* filed by MCI WorldCom in the above-captioned matter.[2] As an initial matter, GTE notes that many of the issues raised by MCI

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[1] These comments are filed on behalf of GTE's affiliated domestic telephone operating companies, GTE Wireless Incorporated, GTE Media Ventures, and GTE Communications Corporation. GTE's domestic telephone operating companies are: GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

[2] MCI WorldCom Petition for Further Reconsideration, CC Docket Nos. 96-115 and 96-149 (filed Nov. 1, 1999) ("MCI WorldCom Petition").

WorldCom have been addressed and decided consistently by the Commission in both the *Second Report and Order and Further Notice of Proposed Rulemaking*[3] and the *Order on Reconsideration and Petitions for Forbearance*.[4] Accordingly, the Commission would be well within its discretion to dismiss MCI WorldCom's petition as repetitious under Section 1.429(i) of its rules.[5] However, should the Commission opt to address the merits of this petition, GTE urges the Commission not to allow MCI WorldCom to succeed in its efforts to eviscerate the written consent requirement of Section 222. To do so would be to upset the delicate balance Congress has mandated between the privacy concerns of consumers and the degree of disclosure necessary to ensure a competitive market. At the same time, however, GTE agrees with MCI WorldCom that carriers should be allowed a greater degree of flexibility regarding the specific information they are able to – or required to – supply customers regarding their decision to provide consent.

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[3] *Implementation of the Telecommunications Act of 1996*, 13 FCC Rcd 8061 (Second Report and Order and Further Notice of Proposed Rulemaking) (1998).

[4] *Implementation of the Telecommunications Act of 1996*, FCC 99-223, CC Docket Nos. 96-115 and 96-149 (Order on Reconsideration and Petitions for Forbearance) (rel. Sept. 3, 1999) ("*Order on Reconsideration*").

[5] 47 C.F.R. § 1.429(i) ("Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstances, a second petition for reconsideration may be dismissed by the staff as repetitious.").

I. Section 222 Of The 1996 Act Requires Carriers To Obtain Written Consent Prior To Accessing Customer Proprietary Network Information ("CPNI").

MCI WorldCom asks the Commission to reconsider its decision to require prior written consent before a carrier, in the course of a marketing contact, may access a potential customer's CPNI. MCI WorldCom argues that telemarketers should be able to access customer feature information merely with oral customer approval. GTE urges the Commission to deny MCI WorldCom's request, as it is patently inconsistent with Section 222 of the 1996 Act.

Customer feature information is unquestionably CPNI. Section 222(c)(2) states that "[a] telecommunications carrier shall disclose customer proprietary network information, *upon affirmative written request by the customer.*"[6] Clearly, then, Congress, while taking a number of steps to encourage competition in local telephony, specifically rejected the notion that competing carriers should have access to customer CPNI, including feature information, without prior written consent.

In order to compete effectively for local telephone subscribers, MCI WorldCom argues, it must be able to seamlessly transition customers from the incumbent's offering to its own, with all customer features intact (*i.e.*, migrate "as is"). MCI WorldCom further contends that consumers are often uncertain about the specific features to which they subscribe, and, as a result, service commencement can be delayed. In making this argument, however, MCI WorldCom ignores the fact that specific customer feature information can easily be determined from the customer's telephone bill. Accordingly,

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[6] 47 U.S.C. § 222(c)(2) (emphasis added).

the inability to obtain this information from the current carrier cannot be said to undermine its ability to compete. Therefore, the Commission should reject MCI WorldCom's request that competitors be allowed access, for marketing purposes, to customer feature information upon oral consent.

II. The Commission Must Reject MCI WorldCom's Attempt To Render Moot Section 222(c)(2)'s Written Consent Requirement.

In the *Order on Reconsideration and Petitions for Forbearance*, the FCC reaffirmed its finding that an incumbent carrier is not required to disclose a customer's CPNI to a competing carrier who has "won" the customer absent written consent: "the term 'initiate' in Section 222(d)(1) does not require that a customer's CPNI be disclosed by a carrier to a competing carrier who has 'won' the customer as its own."[7] However, the Commission also noted that, under certain circumstances, a carrier's interconnection obligations *may* require it to disclose certain information (*e.g.*, the customer service record) needed to provide service. On the basis of this rather limited finding, MCI WorldCom urges the Commission to declare broadly that the failure to provide CPNI to a new entrant that has obtained customer consent constitutes a *per se* violation of Sections 201(b), 251(c)(3), and 251(c)(4). Not only would such a finding be in direct conflict with the Commission's construction of Section 222(d)(1), it would also violate one of the primary canons of statutory interpretation by reading Sections 201 and 251 to effectively render Section 222(c)(2)'s written consent requirement

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[7] *Order on Reconsideration*, ¶ 86 (citing 13 FCC Rcd 8061, 8125 (1998)).

meaningless.[8] Accordingly, the Commission should reject MCI WorldCom's argument that the failure to provide CPNI to a competitor once that competitor has obtained the customer's permission is in all cases a violation of Sections 201(b), 251(c)(3), and 251(c)(4).

A. A local exchange carrier's obligations under Sections 251(c)(3) and 251(c)(4) *may* require it to disclose a *customer's service record*, not the full range of CPNI.

With respect to Sections 251(c)(3) and 251(c)(4), MCI WorldCom improperly expands the Commission's findings to include *all* CPNI, in *every* situation, when in fact the Commission merely stated that "although an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or section 222(c)(2) absent an affirmative written request, local exchange carriers *may* need to disclose *a customer's service record* upon oral approval of a customer to a competing carrier prior to its commencement of service as part of a local exchange carrier's section 251(c)(3) and (c)(4) obligations."[9] Far from requiring the disclosure of *all* CPNI, the Commission simply suggests that carriers *may* need to disclose *only* that information necessary to initiate service: the customer service record. MCI WorldCom is attempting to circumvent the written consent requirement of Section 222(c)(2) through an

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[8] *See, e.g., Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991) ("But of course we construe statutes, where possible, so as to avoid rendering superfluous any parts thereof.") (citation omitted), *Asiana Airlines v. FAA*, 134 F.3d 393, 398 (D.C. Cir. 1998) ("A cardinal principle of interpretation requires us to construe a statute 'so that no provision is rendered inoperative or superfluous, void or insignificant.'") (citations omitted).

[9] *Order on Reconsideration*, ¶ 86 (emphasis added).

unreasonable expansion of this narrow exception. The Commission must not allow this to occur.

B. Section 201(b) *may*, depending on the circumstances, require the disclosure of CPNI.

The Commission also stated in its *Order on Reconsideration and Petitions for Forbearance* that it had previously "noted that a carrier's failure to disclose CPNI to a competing carrier that seeks to initiate service to that customer who wishes to subscribe to a competing carrier's service, *may well constitute* an unreasonable practice in violation of section 201(b), *depending on the circumstances.*"[10] MCI WorldCom has provided no justification for the extension of this narrow exception – which clearly depends upon a fact-specific inquiry – into an outright elimination of the written consent requirement found in Section 222(c)(2).

III. A Carrier Should Be Allowed The Flexibility To Inform Customers That The Failure To Provide Consent To View The Customer Service Record May Affect That Carrier's Ability To Provide Service.

MCI WorldCom urges the Commission "to modify its decision and permit new entrants to fully and accurately inform customers of the consequences of withholding [CPNI] consent."[11] GTE believes that MCI WorldCom may be overstating the issue. A carrier should be able to inform new customers that the failure to provide access to customer service record information – but not *all* CPNI – may impede that carrier's ability to transition the customer to its service. Failure to provide access to the

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10 *Id.* (emphasis added).

11 MCI WorldCom Petition at 13.

customer service record may impede the initiation of service, and the carrier should be able to truthfully inform the customer of this consequence. Accordingly, GTE supports MCI WorldCom's request, but only in this limited circumstance.[12]

IV. GTE Supports MCI WorldCom's Request For Carrier Flexibility In Conveying Consent Information To Customers.

GTE agrees with MCI WorldCom that carriers should be afforded a reasonable amount of flexibility with regard to the manner in which they inform customers of "the full scope of the CPNI that may be viewed and the entities that may view it."[13] GTE supports MCI WorldCom's request that carriers be given flexibility to describe the CPNI to be used and the entities that may view it. The current rules allow such flexibility. Therefore, no change in the rules is necessary to accomplish MCI WorldCom's request.

V. The Commission Should Eliminate Its Long Form Consent Requirements For Inbound Calls.

MCI WorldCom argues that, with respect to inbound calls, "[c]ustomer privacy concerns are adequately protected by a broad statement indicating the scope of the CPNI that may be used and the general purpose for which it will be used . . .."[14] As an initial matter, GTE points out that the plain language of Section 222(d)(3) does not require detailed notice requirements for inbound calls.[15] Accordingly, GTE supports

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12 Other CPNI, such as calling plans, discounts, etc., is, of course, *not* required. As such, MCI WorldCom's request for authority to access CPNI other than customer service record information in order to initiate service should be rejected.

13 MCI WorldCom Petition at 13.

14 *Id.* at 15.

15 *See* 47 U.S.C. § 222(d)(3).

MCI WorldCom's position on this issue and urges the Commission to eliminate the four specific requirements it adopted in the *Order on Reconsideration and Petitions for Forbearance.*[16] Instead, the Commission should allow carriers flexibility in dealing with customer inquiries in the context of inbound telemarketing calls.

VI. PIC Freeze Status Is CPNI.

MCI WorldCom asks the Commission to conclude that PIC freeze information is not CPNI. GTE disagrees. The plain language of Section 222 clearly indicates that both PIC and PIC freeze information are included within the statutory definition of CPNI. Section 222(f)(1) defines CPNI in part as "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer . . .."[17] PIC freeze information falls squarely within this definition because it is a specific "type" of telecommunications service: it establishes the customer's preferred methodology for how service changes should be accomplished. Accordingly, the Commission should reject MCI WorldCom's argument that PIC freeze information is not CPNI.

VII. There Is No Basis For MCI WorldCom's Proposed Presumption That Any Winback Efforts Be Deemed Unlawful If Undertaken Before The New Carrier Has Begun Providing Service.

MCI WorldCom argues that "[t]he Commission should establish a presumption that any winback efforts are deemed unlawful if undertaken before the new carrier has

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16 *Order on Reconsideration*, n.511.

17 47 U.S.C. § 222(f)(1)(A).

actually begun providing service."[18] However, MCI WorldCom provides no justification for such a presumption. As such, the Commission should refrain from adopting MCI WorldCom's proposal.

First, winback efforts are literally consistent with Section 222, in that they relate to the "use" of "individually identifiable customer proprietary network information in [the] provision of the telecommunications service from which such information is derived" in accordance with Section 222(c)(1). Second, and, more importantly, they are an integral aspect of local competition. Incumbent carriers, upon learning through their retail operations of a "lost" customer, attempt to retain that customer by way of a more attractive offer. That is simply how competition operates – through competitive responses to existing market conditions. In addition, customers, upon signing up with a new entrant, often contact their current carrier to "fish" for a counter-offer. Adoption of MCI WorldCom's proposed presumption would have an anti-competitive chilling effect on such counter-offers by previous carriers. Further, the Commission should think twice before interfering with the very competitive process that it so eagerly wants to foster. Finally, GTE points out that any such presumption would apply with equal force to a new entrant that is "losing" a customer to an ILEC. For all of the above reasons, the Commission should abstain from adopting this presumption.

VIII. Conclusion.

MCI WorldCom, having failed to persuade the Commission to allow it to use CPNI for marketing purposes, now attempts to achieve its desired result by urging the

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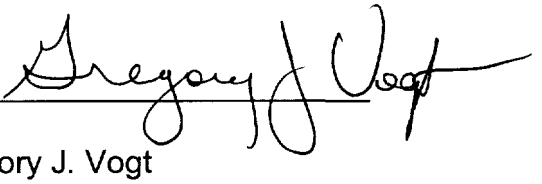
[18] MCI WorldCom Petition at 17.

Commission to adopt additional – and expand existing – exceptions to Section 222(c)(2)'s written consent requirement that would effectively render it meaningless. GTE urges the Commission to reject MCI WorldCom's efforts to upend the delicate balance between customer privacy and competition struck by Congress and refined by the FCC.

Respectfully submitted,

GTE Service Corporation and its
Designated Affiliates

By: 

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December 2, 1999

CERTIFICATE OF SERVICE

I, Jackie Martin, hereby certify that on this 2nd day of December, 1999, I caused copies of the foregoing *Opposition and Comments of GTE* to the *MCI WorldCom Petition for Further Reconsideration* in CC Docket Nos. 96-115 and 96-149 to be sent via hand-delivery to the following:

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